

**28IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**PN2-1445 LTD.,
Plaintiff,**

V.

**THE HANOVER INSURANCE
COMPANY AND MASSACHUSETTS
BAY INSURANCE COMPANY;
Defendants.**

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CIVIL ACTION NO. _____

[JURY DEMANDED]

DEFENDANTS' NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Defendants, THE HANOVER INSURANCE COMPANY ("Hanover") and MASSACHUSETTS BAY INSURANCE COMPANY ("Mass Bay"), and files this, their Notice of Removal pursuant to 28 U.S.C. §§ 1332, 1441, and 1446 as follows:

I. PROCEDURAL HISTORY

1. On August 23, 2019, Plaintiff, PN2-1445, Ltd., ("Plaintiff") filed its Original Petition and initiated an action against Defendants in the 281st Judicial District Court of Harris County, Texas, in Cause No. 2019-59294 (the "State Court Action"). *See* Exhibit "A" attached hereto and incorporated herein by reference.
2. Defendant, Mass Bay, was served on September 24, 2019, with a copy of the Summons of Citation and Plaintiff's Original Petition. *See* Exhibit "B" for a copy of the Citation attached hereto and incorporated herein by reference.
3. Defendants, Hanover and Mass Bay, filed an Answer and Verified Denial in the State Court Action on October 21, 2019. *See* Exhibit "C" attached hereto and incorporated herein by reference.
4. Defendants' Notice of Removal was also filed on October 21, 2019, which is within the

thirty-day statutory time period for removal allowed under 28 U.S.C. § 1446(b).

II. FACTUAL BACKGROUND

5. Defendant, Mass Bay, provided commercial property insurance Plaintiff under Policy No. ZDD-D004648-01 (the “Policy”) for the property located at 1445 N. Loop West, Houston, Texas 77008 (the “Property”).

6. This suit arises out of a claim for property damage caused by Hurricane Harvey on or about August 26, 2017. Plaintiff sustained physical damage from water intrusion to the structure during this weather event and contends that Defendants underpaid the loss.

7. Defendants do not admit the underlying facts alleged by Plaintiff and expressly deny liability to Plaintiff. Defendant, Mass Bay, contends that it has paid for the covered amount of loss, and more, and that no additional money is owing.

III. DIVERSITY JURISDICTION

8. Plaintiff, PN2-1445, Ltd., is a limited partnership formed under the laws of Texas in 2003. Plaintiff’s general partner is PN2-1445 GP, LLC, a limited liability company. The members of PN2-1445 GP, LLC are Max Blankfeld and Joe Pryzant. Thus, upon information and believe every member of PN2-1445, Ltd. is a citizen of the State of Texas and domiciled in Texas.

9. Defendant, Mass Bay, is an insurer incorporated under the laws of the State of New Hampshire and with its principal place of business in the Commonwealth of Massachusetts.

10. Defendant, Hanover, is an insurer incorporated under the laws of the State of New Hampshire and with its principal place of business in the Commonwealth of Massachusetts. However, Hanover is not a proper party to this action and its citizenship can be disregarded for the purposes of venue. Hanover consents to this removal.

11. Removal is proper because there is complete diversity between the parties.

12. Venue is proper in the Southern District of Texas, Houston Division, because the Property made the subject of the suit is located within the Houston Division.

13. The “matter in controversy” under 28 U.S.C. § 1332(a) is determined by reference to the plaintiff’s pleadings. The damages the plaintiff claims in its petition, if apparently claimed in good faith, are controlling. *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288 (1938). Plaintiff has pled that it seeks damages in excess of \$100,000.00 in its Petition at Paragraph No. 6. See Exhibit “A.” Thus, the total economic damages and attorneys’ fees being sought exceeds the \$75,000 jurisdictional minimum amount in controversy.

IV. INFORMATION FOR THE CLERK

14. Plaintiff: PN-1445, Ltd.

15. Defendants: The Hanover Insurance Company and Massachusetts Bay Insurance Company.

16. The case is pending in the 281st Judicial District Court of Harris County:
Honorable Christine Weems
Harris County Civil Courthouse
201 Caroline, 14th Floor
Houston, TX 77002
Phone: (832) 927-2130

17. Pursuant to 28 U.S.C. § 1446(a) and Local Rule 81, Defendant, Mass Bay, has attached copies of all processes and pleadings served upon it in the state court action. No further proceedings have been had therein. Pursuant to Local Rule 81, a copy of the trial court’s docket sheet is attached as Exhibit “D” and an Index of Matters Being Filed is attached.

18. There are no other pleadings in state court.

19. Counsel for Plaintiff:

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20. Counsel for Defendants, The Hanover Insurance Company and Massachusetts Bay Insurance Company:

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21. Plaintiff demanded a jury trial in state court.
22. Defendants demanded a jury trial in state court and request a trial by jury in federal court as well.

Miscellaneous

23. On the same day this Notice of Removal was filed, Defendants filed notice of this removal in the State Court Action. A copy of this Notice of Removal filed in the State Court Action is attached as Exhibit "E."
24. Because Plaintiff is a partnership whose partners are Texas residents; Defendants are foreign insurers who are incorporated under the laws of New Hampshire and have their principal place of business in Massachusetts, and the amount in controversy exceeds \$75,000, the Court has subject matter jurisdiction based on diversity of citizenship and residency. 28 U.S.C. § 1132. As

such, this removal action is proper.

WHEREFORE, Defendants respectfully request that the above-entitled action be removed from the 281st District Court of Harris County, Texas, to the United States District Court for the Southern District of Texas, Houston Division.

Respectfully submitted,

By: /s/ Peri H. Alkas
Peri H. Alkas
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**ATTORNEY-IN-CHARGE FOR DEFENDANTS,
THE HANOVER INSURANCE COMPANY AND
MASSACHUSETTS BAY INSURANCE COMPANY**

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served upon all known counsel of record as listed below by placing a copy of same in the United States mail, certified, return receipt requested, electronically, and/or hand delivery on October 22, 2019.

Jeff M. Golub
David W. Jones
BECK | REDDEN LLP
1221 McKinney, Suite 4500
Houston, TX 77010

VIA CM/RRR: : 7106 1970 0001 1488 1349 &
VIA E-NOTIFICATION: jgolub@beckredden.com
djones@beckredden.com

/s/ Peri H. Alkas

Peri H. Alkas